

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.587 of 2007

Sumaiya

.. Petitioner

Vs

1. The Secretary to Government,
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St. George, Chennai-9.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 600 008.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein calling for the records relating to the detention order No.146/BDFGISSV/2007 dated 7.4.2007 passed by the second respondent and set aside the same and direct the respondent to produce the body of the detenu Majid S/o. A.S.A. Jalal, aged about 28 years detenu now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty forthwith.

For Petitioner : Mr.A.K.S.Thahir

For Respondents: Mr.N.R.Elango

Additional Public Prosecutor

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ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The order dated 7.4.2007, passed by the second respondent, dubbing one Majid, son of A.S.A.Jalal, as a Video Pirate and directing his detention under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand

Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is challenged in this writ petition by the wife of the detenu.

2. The order of detention dated 7.4.2007 came to be passed based on the ground case said to have taken place on 3.4.2007 on the basis of the complaint lodged by one Ramanujam before the Deputy Commissioner of Police, Central Crime Branch, Chennai Police. According to the complainant, he is an investigator in the Indian Music Industry. When he was proceeding at Burma Bazaar to watch whether any person is indulging in sales of pirated DVD/CDs, he found selling of pirated VCDs. Based on his complaint, the detenu was arrested and a case was registered in Central Crime Branch X Crime No.158/2007 under Section 51 r/w 63 of Copy Right Act and 292(2) of I.P.C.

3. Heard Mr.A.K.S.Thahir, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the respondents.

4. Since Mr.A.K.S.Thahir, learned counsel for the petitioner wants to restrict his submission only on the ground of delay in considering the representation, we do not propose to go into the other aspects, except to refer the delay in considering the representation as highlighted by the counsel for the petitioner.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide *Rajammal v. State of T.N.*, (1999) 1 SCC 417.

6. In the case on hand, the impugned order of detention came to be passed on 7.4.2007. A representation was made to the detaining authority on 14.4.2007 and the detaining authority received the same on 16.4.2007. Parawar remarks were called for from the Sponsoring Authority on 17.4.2007. Remarks were received from the Sponsoring Authority on 18.4.2007. Report sent to the Government on 21.4.2007, which was received on 23.4.2007. The Under Secretary dealt with the file on 26.4.2007 and the concerned Minister dealt with the file on 27.4.2007. Even though the rejection letter was prepared on 2.5.2007 and sent on 2.5.2007, the same was served on the detenu only on 7.5.2007. The delay in serving the rejection letter, viz., between 2.5.2007 and 7.5.2007 - a period of five days, was highlighted by the learned counsel for the petitioner. Even though 5.5.2007 and 6.5.2007 happened to be public holidays, there is no convincing reply on behalf of the State for the delay in serving the rejection order on the detenu. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for three days (excluding Saturday and Sunday), between 2.5.2007 and 7.5.2007. There is absolutely no explanation for this delay.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

"In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of three days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 7.4.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

सत्यमेव जयते

Sd/-

Asst. Registrar.

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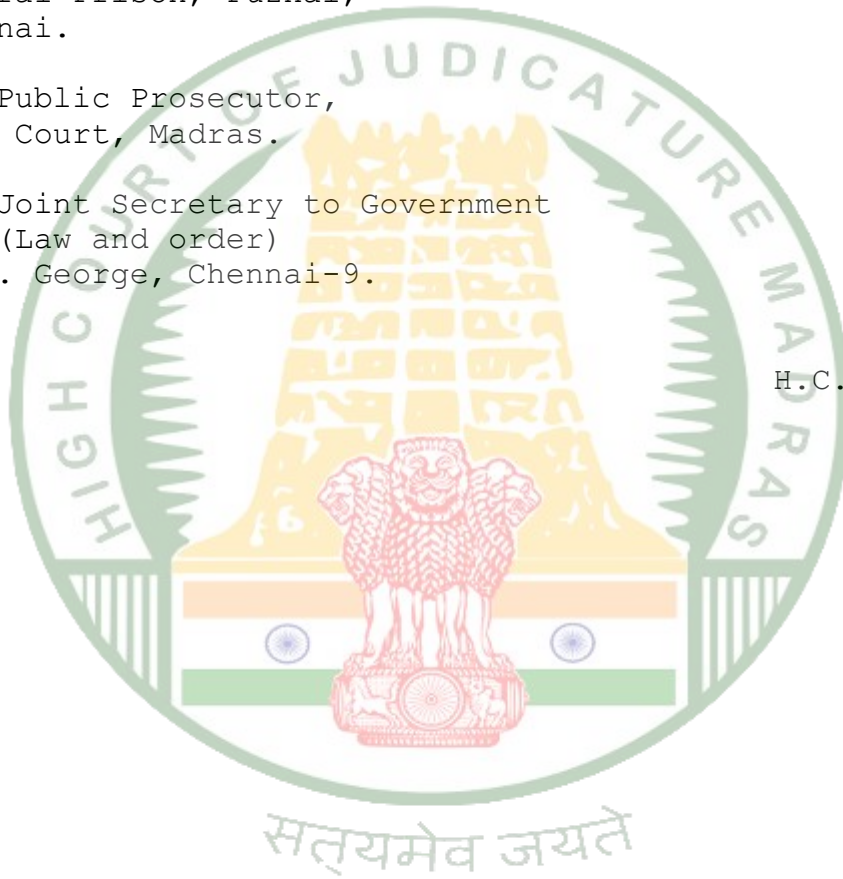
Sub Asst. Registrar.

To:

1. The Secretary to Government,
Prohibition and Excise Department,
Government of Tamilnadu,
Fort St. George, Chennai-9.
2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 600 008.
3. The Superintendent,
Central Prison, Puzhal,
Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

H.C.P.No.587 of 2007

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